

**REMARKS**

As required, Applicant has inserted a cross-reference to the co-pending related U.S. patent application, Serial No. 09/498,856.

Claims 8-12 have been rejected under 35 U.S.C. §251 as constituting an improper recapture of broadened claim subject matter surrendered in the application for the patent upon which the present reissue application is based. However, for the reasons set forth in greater detail hereinafter, Applicant respectfully submits that the present application does not recapture subject matter which was surrendered in the prosecution of the issued patent, because the claims of the present application are directed to an altogether different invention than that of the issued patent. In particular, the patented claims recite "output torque estimation" in a system for controlling selection of gear position in an automatic transmission, while the claims of the present application recite first and second input torque estimating units for estimating the input torque transmitted to the automatic transmission.

In the Office Action dated May 9, 2001, the Examiner has noted that the terms "input" and "output" are relative in nature, and that the output torque of the engine could also be referred to as the input torque of the torque converter. With the latter proposition Applicant does not take issue. However, it is submitted that the use of the phrases "input torque" and "output torque" in the claims of the present application and in those of the issued patent are not simply two different ways of characterizing the same quantity, as suggested. Rather, as noted previously, the claims differ fundamentally for the reasons set forth hereinbelow.

In the claims of the surrendered patent, an output torque of the automatic transmission is estimated, and the running load is estimated by using the output torque, etc. On the other hand, the claims of present reissue patent application (hereinafter "reissue claims") recite that an input torque of the automatic transmission is estimated.

Although there is a correlation between the output torque of an automatic transmission and the input torque of the transmission, these two quantities are basically different. For example, when the rotation ratio between the input axis and the output axis of the automatic transmission is 1:1, the input torque is equal to the output torque. However, when the rotation ratio between the input axis and the output axis is 1:2, the input torque of the transmission is equal to one-half the output torque. Thus, the input torque and the output torque are not identical, and their use in the claims of the present application and those of the issued patent, respectively, are not simply equivalent characterizations of the same quantity.

More specifically, in the claims of the surrendered patent, an output torque  $T_o$  (1023) in Figure 10 is estimated, and a running load  $T_1$  (1028) is estimated with the estimated output torque  $T_o$  and others. In Claim 8 of the present application, the first input torque  $T_{t1}$  (1014) of Figure 10 and the second input torque  $T_{t2}$  (1019) of the same figure are estimated. Thus, in the claims of the surrendered patent, a construction of element 110 of Figure 10 is the main subject matter, while in Claim 8 of the present invention, a construction of element 108 of Figure 10 is the main subject matter. Accordingly, the claims of

the present invention do not simply constitute a broadening of the subject matter claimed in the issued patent. Rather, they focus on a different feature of the disclosed invention, which was not claimed in the issued patent, through an oversight.

In light of the foregoing remarks, this application should be in condition for allowance, and early passage of this case to issue is respectfully requested. If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages in other fees, be charged, or any overpayment in fees be credited, to the Deposit Account of Crowell & Moring, LLP, Account No. 05-1323 (Docket #381TO/41092RE).

Respectfully submitted,



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